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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-988

HERMAN H. KRAUSE, *et al.*,

Petitioners,

v.

CITY OF BRUNSWICK, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINION BELOW

The opinion delivered in the Supreme Court of Georgia is not as yet officially reported, but is appended to the Petition for a Writ of Certiorari (Pet. App. A-1). The opinion was delivered by the Supreme Court of Georgia on September 27, 1979, Opinion No. 34920.

JURISDICTION

The relief sought by Petitioners in the state court proceeding was a declaratory judgment. The Supreme

Court of the United States will not review merely declaratory judgments. *Liberty Warehouse Co. v. Burley Tobacco Growers' Co-operative Association,* 376 U.S. 71 (1928).

At no point in the course of this litigation, prior to their Petition for Writ of Certiorari, have Petitioners raised any federal question based upon the Rivers and Harbours Act of 1899, as amended, 33 U.S.C. Sections 401, 403, 407 and 491. Federal questions relied upon to confer jurisdiction on this Court cannot first be raised on a Petition for Writ of Cretiorari to Supreme Court of the United States. *Spies v. Illinois,* 123 U.S. 131 (1887); *Quimby v. Boyel,* 128 U.S. 408 (1888); *Morrison v. Watson,* 154 U.S. 111 (1894); *Scudder v. Comptroller of New York,* 175 U.S. 32 (1899); *Chapin v. Fye,* 179 U.S. 127 (1900); *Sweringen v. St. Louis,* 185 U.S. 38 (1902); *Rogers v. Clark Iron Co.,* 217 U.S. 589 (1910).

It is essential that at some point in the procedure in state court proceeding for the Petitioners to have raised a federal question to confer jurisdiction. *Murdock v. Memphis,* 87 U.S. 590 (1875); *Church v. Kelsey,* 121 U.S. 282 (1887). The record of proceeding in the state court will reveal a complete absence of any substantial federal question.

QUESTIONS PRESENTED

Petitioners' brief misstates the nature of the legal issue, or issues sought to be reviewed. The issue presented to the trial court and reviewed by the Supreme Court of Georgia is: Do Petitioners, who are residents and taxpayers of the State of Georgia and Glynn County, a political subdivision of the State of Georgia, by virtue of their citizenship alone and who claim no ownership of the Brunswick-St. Simons Causeway in their own right,

have the legal standing in a suit for declaratory judgment to raise the question of who owns the Brunswick-St. Simons Causeway, as between the Respondents, when no contest or dispute existed between the Respondents, the City of Brunswick and Glynn County, as to ownership of the Brunswick-St. Simons Causeway? The second issue presented, in the event Petitioners had such standing and the right to obtain a declaratory judgment is whether the trial court erred in its determination that the Brunswick-St. Simons Causeway is owned by Glynn County or the City of Brunswick or both, and in its failure to declare that the Causeway was owned by the State of Georgia, when the State of Georgia, was not a party to the proceedings in the trial court and did not contest the ownership of the Causeway being vested in the City of Brunswick and/or Glynn County.

STATEMENT OF THE CASE

Petitioners assert in their Petition for Writ of Certiorari that this case is one involving the ownership of 400,000 acres, or more, of marshland located along the entire coast of Georgia. The Petitioners do not claim ownership or title to any of the marshland in question. The only ownership question framed by the litigation in the state court pertains to the Brunswick-St. Simons Causeway, which leads from the City of Brunswick, Georgia to an offshore barrier island known as St. Simons Island, which like the City of Brunswick is located in Glynn County, a political subdivision created by the State of Georgia. The Causeway is a public highway, approximately five miles long and approximately one hundred to two hundred feet wide.

The only parties involved in the state court proceedings were the Petitioners and Respondents. One of the Respondents is the City of Brunswick, a municipal

corporation created and chartered by the General Assembly of Georgia. The other Respondent is Glynn County, a political subdivision of the State of Georgia. The State of Georgia, although named as an original party in the pleading filed with the trial court, was dismissed as a party defendant by the trial court and this ruling was upheld by the Supreme Court of Georgia. *Krause v. City of Brunswick*, 242 Ga. 659 (1978). The ownership of marshland by any other party is not presented for decision in this litigation.

The Brunswick-St. Simons Causeway was at the time the present litigation was filed and is at the present time operated by the City of Brunswick and Glynn County, jointly, as a public toll road. The State of Georgia does not dispute the operation of the Causeway by the City of Brunswick and Glynn County, nor does the State of Georgia claim ownership of the marshland on which the Brunswick-St. Simons Causeway is constructed. In fact, in an Amicus Curiae Brief filed with the Supreme Court of Georgia, the State of Georgia stated that portions of the causeway had been granted by the State to Glynn County, and even if some portions were owned by the State of Georgia, the State has never objected to the operation of this essential public highway.

The present litigation has twice been to the Supreme Court of Georgia. In the first appearance, the Supreme Court of Georgia was called upon to review the trial court's rulings dismissing the State of Georgia as a party and the trial court's refusal to temporarily enjoin the collection of tolls by Glynn County. The Supreme Court of Georgia affirmed both rulings of the trial court. *Krause v. City of Brunswick*, 242 Ga. 659 (1978).

In the second Appearance of this case before the Supreme Court of Georgia, the Supreme Court of Georgia was asked to review the trial court's denial of Petitioners'

Motion for Summary Judgment and granting of the trial court of a motion for Summary Judgment in favor of Respondents. (Pet. App. A-2). The Supreme Court of Georgia affirmed the trial court's rulings. (Pet. App. A-1).

The Motion For Summary Judgment granted to Respondent in the trial court was on all issues raised in the complaint as amended. It must be remembered that this suit was one for declaratory judgment, and that the Respondents at the trial court level questioned the legal standing of the Petitioners to institute such an action. The trial court's granting of the Motion for Summary Judgment established that Petitioners did not have standing to litigate the ownership of Brunswick-St. Simons Causeway. See *Krause v. City of Brunswick*, 242 Ga. 659, 661 (1978).

ARGUMENT

I

THE COURT DOES NOT HAVE JURISDICTION TO ENTERTAIN THE PETITION.

The federal question relied upon to confer jurisdiction on Supreme Court cannot first be raised in Supreme Court of United States. *Spies v. Illinois*, 123 U.S. 131 (1887); *Quimby v. Boyd*, 128 U.S. 488 (1888); *Morrison v. Watson*, 154 U.S. 111 (1894); *Scudder v. Comptroller of New York*, 175 U.S. 32 (1899); *Chapin v. Fye*, 179 U.S. 127 (1900); *Sweringen v. St Louis*, 185 U.S. 38 (1902); *Rogers v. Clark Iron Co.*, 217 U.S. 589 (1910).

It is essential that at some point in the procedure before the state courts the federal question relied upon to confer jurisidiction be presented for decision. *Murdock v. Memphis*, 87 U.S. 590 (1875); *Church v. Kelsey*, 121 U.S. 282 (1887).

At no point in the course of this litigation, prior to thier Petition, have Petitioners raised any federal question based upon the Rivers and Harbours Act of 1899, as amended, 33 U.S.C. Sections 401, 403, 407 and 491.

II

PETITIONERS HAVE NO STANDING TO LITIGATE THE QUESTION OF TITLE TO THE CAUSEWAY.

Petitioners, as citizens and taxpayers, do not claim nor do they have any interest in the ownership of the Brunswick-St. Simons Island Causeway. The issue of ownership of the Causeway has not been disputed by the County, the City or the State, nor has the State opposed the use of the Causeway as a public highway.

III

THE RULING OF THE SUPREME COURT OF GEORGIA DOES NOT INVOLVE TITLE TO GEORGIA'S SALT WATER MARSHES.

This litigation concerns only the Brunswick-St. Simons Island Causeway. The main thrust of Petitioners' argument is that the determination by the trial court that the Causeway is owned by either the City or the County, or both, and the affirmance of that decision by the Supreme Court of Georgia, is tantamount to a holding that title to all marshland along the Georgia Coast is in the local government, and conversely, is not in the State of Georgia. Petitioner's argument must fail for two reasons: (1) The State of Georgia was not a party to the litigation at the time of the Georgia Supreme Court's decision; therefore, the Court could not have properly adjudicated the rights of a party not before it; (2) The State of Georgia does not dispute ownership of the Causeway, as stated in its brief as Amicus Curiae.

> "[I]t [ownership of marshlands] is an interesting legal issue which is simply not presented by the facts of this case. As the Court has already held, there is no controversy between the State, the County and the City as to ownership of the Causeway. Portions of the Causeway have been specifically granted by the State to Glynn County. Even if some portions are owned by the State, the State has never objected to the operation of this essential public highway." (Brief of the State of Georgia as Amicus Curiae, p. 3).

Petitioners misconstrue the effect of the Georgia Supreme Court's ruling. The effect of that ruling is twofold: (1) that no justiciable controversy existed between the parties in the litigation as it appeared below; and (2) that Petitioners herein had no standing to raise and litigate a dispute as to title of other parties, i.e., the State of Georgia, County of Glynn, and City of Brunswick. The jurisdiction of the Court was limited to the parties before it; therefore, its ruling did not dispose of, or in any way effect, any claim the State of Georgia may have to the marshlands along the coast of Georgia, including that portion of the marshland upon which the Causeway is constructed.

For the reasons set out above, it is apparent that the ruling of the Georgia Supreme Court cannot be in conflict with the decisions cited in the Petition, and further, that this case is not one of nationwide or statewide importance.

CONCLUSION

For the reasons stated above, Respondents say that a Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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